In the Punjab and Haryana High Court, Chandigarh.

RSA 3646 of 2006

Date of decision:17.09.2007.

Surinder Singh .... Appellant.

Versus

Gulzar Singh .... Respondent

Present: Mr.Arun Abrol, Advocate, for the appellant.

PERMOD KOHLI, J.

This is defendant's regular second appeal against the judgment and decree dated 02.05.2006, passed by the learned Additional District Judge, Gurdaspur, dismissing the appeal of the appellant-defendant against the judgment and decree dated 29.10.1998, passed by the learned Civil Judge (Senior Division), Gurdaspur.

Respondent-Gulzar Singh, filed a suit for possession by way of specific performance against the present appellant on the basis of an agreement to sell dated 02.08.1993 in respect to land measuring 7 Kanals 9 Marlas situated in the revenue estate of village Kissana, H.B. No.707, Tehsil and District Gurdaspur.

The appellant denied the very execution of the agreement to sell. A specific issue was raised being issue No.1 regarding the execution

of the agreement to sell and receipt of the earnest money. While deciding this issue, the learned trial Court returned a finding in favour of the plaintiff-respondent and held that the due execution of the agreement to sell has been duly established by two marginal witnesses i.e. PW-2 Rulia and PW-4 Chanan Singh. The learned trial Court rejected the contention of the appellant that the agreement to sell is fake and fabricated and consequently, decreed the suit directing specific performance of the agreement.

An appeal came to be preferred by the appellant before the learned Additional District Judge, Gurdaspur, which has been decided by the impugned judgment and decree dated 02.05.2006. The learned Lower Appellate Court concurred with the findings of the learned trial Court and dismissed the appeal vide the impugned judgment and decree.

I have heard the learned counsel for the appellant at length and perused the record of the case.

It has been argued on behalf of the appellant that the Courts below have failed to appreciate that the plaintiff-respondent had earlier challenged the allotment of land in favour of the appellant , but he failed in his attempt and after failing to secure the property, he forged and fabricated the agreement to sell and filed the present suit. He has also stated that the agreement to sell was not duly proved in evidence in as much as scribe of the document has not appeared as a witness and the two marginal witnesses are the interested witnesses. Both the learned Courts below have discussed this issue. It has come on the record that the scribe of the document was dead. As regards the two witnesses are concerned, though PW-2 Rulia is related to the plaintiff, but the fact remains that he is

a marginal witness of the document and mere relationship with any party does not itself provide a ground of forgery of the document. As a matter of fact, no circumstance has been indicated in the plaint regarding the alleged forgery. In so far as the witness PW-4, Chanan Singh is concerned, his testimony has been challenged on the ground that this witness is habitual of making false documents. However, no material was produced and the trial Court has, thus, rejected this contention of the appellant. No substantial question of law is shown to have involved in the present appeal. There is concurrent findings of fact recorded by both the learned Courts below regarding due execution of the agreement to sell. No substance in the appeal. Dismissed with no order as to costs.

(PERMOD KOHLI)
JUDGE

September 17, 2007
BLS